ably dangerous to public safety, and for that matter at all such crossings as may be considerec reasonably dangerous to the public. It would seem that the court is correct in saying that the fact that the power may be exercised so as to bankrupt the Company is no reason for denying its existence.

W. H. N.

EQUITABLE RELIEF AGAINST JUDGMENTS FRAUDULENTLY OBTAINED AT LAW.—The problem of equitable interference with judgments tainted with fraud, like the broader proposition of collateral attack upon judgments, is one which has admitted of varying treatment by the courts. Presenting as it does the attempt to do justice to the petitioner and at the same time to hold fast to the maxim *interest rei publicae ut sit finis litium*, there is ample reason why the problem should have been treated with divergent effect. An examination of the cases brings out the fact that the general trend of decisions has been to steer a course between Scylla and Charybdis and to reach principles which in their broader application will do substantial justice. The statement, therefore, that fraud vitiates every contract, decree or judgment to the extent of the fraud must be taken *cum grano* in view of the decisions of the equity court in this connection.

The fraud which will form the basis for equitable interference with a judgment of a court of competent jurisdiction has been described as "fraud relating to the procuring of the judgment itself,"[1] or as described by well considered cases "fraud which is 'extrinsic or collateral' to the issue" submitted to the court pronouncing the judgment.[2] These terms take on meaning only when referred to adjudicated cases. For example, equity will interfere with the enforcement of a judgment where the court itself has been imposed on by the prevailing party[3] or where an attorney corruptly sells out his client's interest,[4] or where a party has been lulled into a sense of security or inaction by the false promise of compromise or settlement,[5] or where by the fraud of the prevailing party the defendant has been prevented from presenting a legal defense.[6] In such cases there has been no sub-

[1] Whitcomb v. Shultz 223 Fed. 268 (1915).

[2] United States v. Throckmorton, 98 U. S. 61 (1878); McEvoy v. Quaker City Cab Co. 267 Pa. 520 (1920).

[3] Wickersham v. Comerford, 96 Cal., 433, 31 Pac. 358 (1892); Larson v. Williams, 100 Iowa, 110, 69 N. W. 441 (1896); Wonderly v. Lafayette County, 150 Mo. 635, 51 S. W. 745 (1899).

[4] Pacific R. R. Co. v. Mo. Pac. R. Co., 111 U. S. 420 (1883); Sanford v. White, 132 Fed. 531 (1904); Renner v. Kannally, 193 Ill. 121, 61 N. E. 1026 (1901).

[5] Greenwaldt v. May, 127 Ind. 511, 27 N. E. 158 (1890); Cadwallader v. McClay, 37 Neb. 359, 55 N. W. 1054 (1893); Fidelity Co. v. Crenshaw, 120 Tenn. 606, 110 S. W. 1017 (1908).

[6] Brooks v. Twitchell, 182 Mass. 443, 65 N. E. 843 (1902); Webster v. Skipwith, 26 Miss. 341 (1853).

mission of the issues to a conclusive trial, as the collateral facts constituting the fraud were not before the court and hence were not passed upon. Provided there has been no fault or laches on the petitioner's part[7] and provided that the truth of the allegations appears very strong[8] and provided further that the fraud had a material effect on the judgment,[9] equity will grant relief in these cases.

On the other hand, the equity court has refused to be moved against an existing judgment by mere allegations of fraud as to the subject matter which formed the issue upon which the judgment in question was pronounced. The party seeking relief will be considered to have had his day in court, at which time he should have unearthed the fraud of his adversary. For this reason, judgment in such a case is held to be conclusive, no matter how strong a case for equitable relief the petitioner may present. Perjury is, perhaps, most representative of this "intrinsic fraud." According to the more generally accepted view, the allegation of perjury of the prevailing party and of his witnesses affords no basis for enjoining the enforcement of the judgment.[10] The truth or falsity of the evidence presented by both parties was a fact in issue, and for that reason the judgment is held to be conclusive upon the parties. The falsity of the evidence has not prevented a party to a suit from exhibiting his own case, or from disproving the case of his opponent.

In connection with the distinction drawn above, the decision of the Circuit Court of Appeals, Eighth Circuit, recently pronounced in the case of Chicago, R. I. etc. Ry. Co. v. Callicotte[11] and that of the Supreme Court of Pennsylvania in the case of McEvoy v. Quaker City Cab Co.[12] are apposite in giving lengthy reviews of the authorities. The facts which formed the basis of the opinion of the federal court are significantly illustrative of the principles involved, although the court's application of the principles is perhaps questionable. Callicotte was injured December 28, 1914, while an employee of the railway company and while in its service. In April, 1915 he instituted an action in the state court for personal injuries, and in June, 1915, verdict was rendered and judgment entered in his favor to the amount of $18,000. Motion for new trial was heard and dismissed and the judgment was

[7] Carney v. Marseilles, 136 Ill. 401 (1891); Jewett v. Dringer, 31 N. J. Eq. 586 (1879).

[8] Bloss v. Hull, 27 W. Va. 503 (1886).

[9] Holton v. Davis, 108 Fed. 138 (1901); Boyden v. Reed, 55 Ill. 458 (1870); Dringer v. Erie Ry. Co. 42 N. J. Eq. 573, 8 Atl. 811 (1887).

[10] United States v. Throckmorton, *supra;* Pico v. Cohn, 91 Cal. 129, 25 Am. St. Rep. 159 (1891); Graves v. Graves, 132 Iowa 199, 109 N. W. 707 (1906), 10 L. R. A. (N. S.) 216; McEvoy v. Quaker City Cab Co., *supra.* See, however, Marshall v. Holmes, 141 U. S. 589 (1891).

[11] 267 Fed. 799 (1920).

[12] 267 Pa. 527, 110 Atl. 366 (1920).

affirmed in state supreme court.[13] The railway filed a bill in the federal court in December, 1916, alleging *inter alia* that the respondent had feigned total paralysis of his legs as a result of the injury, had testified and secured others to testify falsely as to the extent of his injuries, and that when examined by his own and the petitioner's medical experts had caused to be produced a temporary paralysis which could not be detected by ordinary medical tests. The petition alleged further, and the answer admitted, that the respondent had free use of his legs since, at the latest, August, 1915, but had feigned paralysis and disguised himself until January, 1916, when the petitioner discovered his true condition. The answer denied all fraud, though it admitted that free use of the legs was recovered two months after the verdict. The court granted an injunction enjoining execution on the judgment, and setting it aside.

The decision is based upon the determination that the concocting of the history of the case by means of perjured witnesses and the deception of the medical men by feigning paralysis was an "extrinsic and collateral" fraud. It is difficult to see how this can be so in view of the court's own citations. It is certainly true that the nature and extent of the respondent's injury was the very thing in issue in the trial at law; indeed, it was the only fact in issue, since Callicotte was entitled to recover, irrespective of the negligence of the railway or of his own contributory negligence.[14] The opinion cites no analogous cases, and relies largely on a dictum of a case which on its facts would militate against the present decision.[15]

The admitted recovery of the respondent within two months after the verdict for $18,000 was rendered was probably the impelling motive for granting relief. The equity of the case is doubtful on the court's own principles. Human legal institutions can but approximate justice, and it would be, perhaps, for the best if the court in the instant case had hewed to the line of previous decisions. If equity acknowledged no principles, but was moved only as each case appealed to its sense of justice the decision has its equity. But when principles have been adopted, it is of questionable value to put them aside in a pressing case, especially when the entire nature of the relief is such as should be meted out with the highest degree of caution.

J. R. Jr.

[13] See decision in State Court, 204 S. W. 529 (Mo. 1920).

[14] The suit had been instituted under Safety Appliance Act Mar. 2, 1893, C. 196, 27 Stat. L. 531. Cf. New York Central R. Co. v. Harrold, 65 How. Prac. 89 (1883); Essex County v. Berry, 2 Vt. 161 (1829) in which relief against alleged excessive damages was denied.

[15] *Obiter* in Wabash R. Co. v. Mirrielees, 182 Mo. 126, 81 S. W. 437 (1904). See however Traction Co. v. Dent, 159 Mo. App. 220, 140 S. W. 606 (1911).